

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

CINDY L. WILBURN, )  
                        )  
Plaintiff,           )  
                        )  
v.                    )       **No. 3:10-CV-8**  
                        )  
                        **(Phillips)**  
MICHAEL J. ASTRUE, )  
COMMISSIONER OF SOCIAL SECURITY, )  
                        )  
Defendant.           )

**MEMORANDUM AND OPINION**

This Social Security appeal is before the Court on the Report and Recommendation (“R&R”) filed by United States Magistrate Judge H. Bruce Guyton [Doc. 17]. There have been no timely objections to the R&R [Doc. 17], and enough time has passed since the filing of the R&R [Doc. 17] to treat any objections as having been waived. *See* 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

After a careful review of this matter, the Court is in complete agreement with the magistrate judge’s conclusion, and thereby adopts the R&R [Doc. 17] in its entirety. Accordingly, for the reasons stated by Judge Guyton in the R&R [Doc. 17], Plaintiff’s Motion for Judgment on the Pleadings [Doc. 11] is **GRANTED IN PART** and **DENIED IN PART**, and the Commissioner’s Motion for Summary Judgment [Doc. 15] is **GRANTED IN PART** and **DENIED IN PART**. In particular, the Court agrees that substantial evidence supports the Administrative Law Judge’s findings as to Plaintiff’s mental capacity, but as more fully explained in the R&R [Doc. 17], the Court finds that this case should be **REMANDED** to address Dr. E. Smith’s opinion regarding

Plaintiff's physical capacity.

**IT IS SO ORDERED.**

**ENTER:**

s/ Thomas W. Phillips  
United States District Judge